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KSBI TELEVISION NETWORK

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Oklahoma City, Oklahoma 73126

98-120

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Michael Powell
Federal Communications Commission
445 12th Street, S.W. 8th Floor
Washington, D.C. 205.54

Dear Chairman Powell:

Thank you for your recent announcement to review multicast must-carry rules for digital television. We appreciate your recognition of the importance of this issue and willingness to fully consider it before the commission.

As religious broadcasters, we are truly local and independent broadcasters that provide a diversity of important viewpoints, quality family friendly programming, and uplifting and inspirational entertainment. We support diversity in the medium, and while we know that the core constitutional element of must-carry is content neutrality, the essence of must-carry provides for a variety of content that promotes our core mission as well as others.

Multicast must-carry is a surviva! issue for many of us. KSBI TV 52 is taking the lead in Oklahoma City as the only 24/7 Digital Station on the air at this time. With plans to launch our second channel (1080i) on digital in the next few weeks. We have been offered many dollars to sell out, but have chosen to stay in the fight for family friendly programming in our State. We are the last ones left, we hope to hang on.

As you know, prior to passage of the "1992 Cable Act", cable offered only limited, discretionary local broadcast station programming choices. In the 1992 Cable Act, Congress balanced public interest needs with industry competitiveness and designed a regulatory structure in which up to one third of a cable operators channel capacity would be set aside for local broadcast signals. Congress further instructed that must-carry apply to future digital television operations. In 1997, the Supreme Court upheld the constitutionality of the must-carry provisions, citing the one third channel capacity allocation. Must-carry has been an essential element in promoting family friendly, spiritual, and local programming.

Given the fact that cable and broadcast are increasing channel capacity in correlating increments, we ask that the FCC's January 18,2001 "primary channel" ruling in CS Docket No. 98-120, be reconsidered to include cable carriage of any free over-the-air broadcast signals contained in 6 mhz of spectrum based on the intent of the 1992 Cable Act to provide an adequate voice for small, independent, and local broadcasters. Cable carriage would be predicated on the broadcaster meeting the FCC licensing requirements for serving the public interest, and occupying up to only one third of a cable operator's capacity.

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Thank you for your attentic to this matter. We look forward to the commission's ru ing on this issue which is so vital to our continued operations and mission. Enclosed are recent comments we've submitted to the FCC in regard to this issue. (see attached).

Sincerely,

Cc: Commissioner Kevin Martin
Commissioner Michael **Copps**
Commissioner Kathleen Abemathy

Digital Must Carry - Why the FCC should adopt a broad view of the "Primary Video" carriage obligation

Introduction

The FCC's decision in January 2001, to limit a cable operator's digital must-carry obligation to the "primary video stream" was an incorrect interpretation of Congressional intent, in light of the must carry provision created in the 1992 Cable Act and upheld by the Supreme Court. The FCC, when it revisits this issue, should rule that must carry provisions in digital television should maintain carriage of the entire 6 mhz of spectrum.

1992 Cable Act and the Supreme Court and its application to Digital Must Carry

In the 1992 Cable Act, Congress legislated that any free over-the-air broadcast programming channels should be carried on a cable system up to 1/3 of a cable operators channel capacity. This formula was carefully constructed by evaluating the number of cable channels and broadcast stations and developing a percentage carriage requirement as opposed to a fixed numerical set aside to ensure a balanced regulation that would be relevant as both cable and broadcast evolved. With the public interest mandates required of broadcasters and the local programming they provide, in 1997 the Supreme Court in reviewing the Cable Act determined that carriage **up** to 1/3 was reasonable and not an undue burden on cable operators.

Digital television technology now allows for multiple streams of programming within the same amount of spectrum, 6 mhz, previously required for one channel of analogy programming. Congress, while unable

to anticipate the exact nature of emerging digital television technology, did foresee in the 1992 Cable Act the necessity of carriage for "advanced television."

Nonetheless, the FCC under former Chairman Kennard ruled that in digital television only one "primary channel" (either one digitally compressed channel or a high definition) of a broadcaster must be carried by a cable operator.

The Commission considered that requiring cable operators to carry multiple digital streams would abridge the editorial freedom of cable operators, harm cable programmers, and broach the right of television audiences to choose their choices of programming, affecting First and Fifth Amendment, Free Speech and Property rights.

These arguments are the same as those offered prior to enactment of the 1992 Cable Act. Then they were rejected by Congress and the Supreme Court, and should be similarly rejected now. Digital technology allows cable operators to expand their channel capacity from their current average of 60 channels to 400 or more. This expansion adds to the editorial freedom and programming capabilities of cable operators, and gives audiences more choices not less. To allow for a corresponding increase in the number of broadcast channels under multicasting, preserves the benefits of free, over-the-air local broadcast television and promotes the widespread dissemination of information from a multiplicity of sources, as broadcasters will be able *to* provide programming more closely tailored for particular audience segments. As the Supreme Court has already ruled with regard to the 1992 Cable Act, these are important government interests that must be preserved as long as a proper balance is established.

Otherwise, broadcasters under the existing "primary channel" rule will be dwarfed in a sea of cable channels among hundreds of stations. The choice

of being limited to either one stream of a multicast of channels or a high definition signal using a full 6 mhz is financially unfeasible and inefficient for most small and local broadcasters and would eliminate many in a digital television world. Thus, carriage of only the one "primary channel" would not fully satisfy the governmental interests in preserving the benefits of free broadcast television that traditionally have been available to over-the-air viewers. It would constitutionally controvert the clear governmental interest identified by the Supreme Court, justified by a narrowly tailored maximum 1/3 cable capacity set aside to ensure the widespread dissemination of information from a multiplicity of sources and diversity of voices in the market.

Multicast must carry will simply maintain the balance struck by Congress which has allowed broadcasters to remain viable and enable the emergence of new networks, while simultaneously allowing cable to grow and prosper with rising cable penetrations of over 80% and 90% in many parts of the country. There is also a strong concern among broadcasters that cable, through vertical and horizontal integration, will exclude channels that compete directly with their owned services, therefore further consolidating editorial control and diversity of programming. Cable operators will continue to maintain programming decisions on a wide variety of topics and formats for the bulk of their systems, while allowing for the inclusion and diversity of broadcast programming to a reasonable extent as determined by the Supreme Court.

Conclusion

The Commission, should properly interpret must carry for digital to include multiple streams of programming within a broadcasters current 6 mhz of spectrum to include free over-the-air channels up to 1/3 of a cable operators capacity. This will perpetuate the balance both Congress and the Supreme Court struck previously, and sustain the mission of must-carry to promote

diversity and free local programming serving the public interest through the television medium.

As religious broadcasters, we are truly local and independent broadcasters that provide a diversity of important viewpoints, quality family friendly programming, and uplifting and inspirational entertainment. We support diversity in the medium, and while we know that the core constitutional element of must-carry is content neutrality, the essence of must-carry provides for a variety of content that promotes our core mission as well as others.

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WORSHIP

September 3, 2002

OCT 28 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Michael Powell, Chairman
Federal Communications Commission
445 12th Street, S.W. 8th Floor
Washington, D.C. **20554**

Dear Chairman Powell:

Just a quick ncte to say "Thank yon" for deciding to review the multicast must-carry rules. This is a crucial issue for advancing digital television.

We work with well over 200 stations that are religions broadcasters or include faith-based programming as a substantial part of their schedules. Most of these stations are locally owned and operated, often by non-profit organizations. In some cases, they are the only locally owned and operated station in their market.

These stations provide family friendly entertainment, quality education, and spiritually inspirational programs. For most, multi-casting is the only practical strategy to build a business plan for the digital future. More importantly, multi-casting is the ONLY way to maintain an influential and diverse voice in a world of400-500 channels. One such channel in a sea of 500 voices will not survive.

The 1992 Cable Act was a great success for broadcasters and cable operators. Both have thrived since that time (other than this "post 9/11" period). Free speech has also thrived in this environment, thus reinforcing the wisdom of the 1997 Supreme Court decision upholding must-carry provisions as long as they were limited to one-third of cable's capacity.

Since digital technology is allowing cable operators to increase channels exponentially, we request that the FCC reconsider it's January 18,2001 "primary channel" ruling in CS Docket No. 98-120. It would be consistent with the Cable Act and a "shot in the arm" to the digital transition if the FCC would include cable carriage of all free over-the-air broadcast signals contained in 6 mhz of spectrum.

Without this change, I believe that many small, independent stations will not survive

Once again, thank you for your work on this matter. I recognize that you have a complex and difficult task ahead of you. May you be granted a corresponding amount of wisdom.

Sincerely,

Dustin D. Rubeck
President and CEO

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Cc: Commissioner Kevin Martin
Commissioner Michael Copps
Commissioner Kathleen Abernathy